expressed on record. It is not enough that a reasonable cause exists. Such cause should be stated in the order itself because it is not only the accused who is entitled to know what that cause is but the appellate court itself should also be able to form an opinion as to its reasonableness. The prosecution similarly has a right to know the reason for the grant of an adjournment by the magistrate.

The High Court on revision can in exercise of the power under section 323 of the Criminal Procedure Code set aside the order for adjournment if it is improper but ordinarily the High Court will be most reluctant to interfere and will not interfere if the magistrate has exercised his discretion judicially and in the interests of justice.

The situation in which Mr. Mahendran found himself was a situation created by and brought upon him by Mr. Mahendran himself and I do see no reason for any complaint by him against the magistrate. I always am, as any other judge always is, happy to see members of the Bar come and bring their complaints so that the administration of justice in our courts may improve and its defects, if any, remedied. I, in fact look for and beseech their help, assistance and co-operation. It was purely in that spirit of having the utmost co-operation and moved by the desire that no member of the Bar should have any cause for a just grievance against any presiding officer of a court that I decided to call for this record and issued instructions to the magistrate that until I had decided this matter, the trial of the Bruas case should stand adjourned. I am conscious, sadly and regrettably conscious, of the fact that the expedience of coming directly to the judge to make a complaint and thereby indirectly securing an adjournment of a case may tend to interfere with and retard the speedy and swift dispensation of justice in criminal cases. I have, however, complete faith in the integrity and the responsibility of the Bar and have every hope that this privilege will not be abused. However, should I find any tendency of its abuse, it will undoubtedly be a source of pain and disappointment, but in such an event I will have no hesitation in ordering costs to be paid by the counsel concerned personally. There seems no restriction in ordering costs to be paid to the court in cases where there is a clear abuse of the process of court which results in delayed justice and is inspired by a motive which is anything but oblique.

I might also add that the provisions of section 259 themselves contemplate that the magistrate can himself impose such terms as he deems fit in the grant of adjournments, although such type of an order should be made only where the circumstances are exceptional.

In the circumstances I am of the view that the magistrate was perfectly right in refusing an adjournment and there are no grounds for me to interfere with his decision.

The accused will appear before the magistrate Bruas on the 10th March, 1972 when the hearing will continue.

Order accordingly.

Solicitors: *Mahendran & Co.*

PUBLIC PROSECUTOR v. ECONOMY PRINTERS SDN. BHD.

[A.Cr.J. (Mohamed Azmi J.) January 19, 1972]

[Kuala Lumpur — Selangor Criminal Appeal No. 229 of 1971]

Wages Councils — Employment — Minimum remuneration — Machine operator in printing business — Whether "shop assistant" or "worker" — Wages Regulations (Shop Assistants) Order, 1970, regs. 3(i)(c), 4(i) and Wages Councils Ordinance, 1947.

Criminal Law and Procedure — Statutory Offence — Prosecution — Wages Council Ordinance, 1947.

Interpretation — Regulations — Wordings of — Natural meaning — Interpretation and General Clauses Ordinance, 1948, s. 20.

This was an appeal against the order of acquittal and discharge of the respondent on a charge under section 13(2) of the Wages Councils Ordinance, 1947.

One Kamaruddin, an employee of the respondent, had been working as a full-time machine operator since 1966. In March 1970 Kamaruddin who was over twenty-one years of age was paid a monthly salary of $96.00. The prosecution contended that, by virtue of the provisions in the Wages Regulations (Shop Assistants) Order, 1970 made under the Wages Councils Ordinance, 1947, the employee was being paid less than the statutory minimum of $100 per month as laid down in regulation 4(i) of the said Order.

The learned magistrate dealt with the case on the basis of whether the employee fell within the meaning of "shop assistants" under the Wages Regulations (Shop Assistants) Order 1970. As the definition of "shop assistants" was not contained in either the Wages Regulations (Shop Assistants) Order 1970 or in the Wages Councils Ordinance, 1947, the learned magistrate applied the meaning of "shop assistants" as defined by section 74 of the English Shops Act 1950, and accordingly held that not only the business connection had to be direct but also that it had to do with the serving of customers. Therefore the employee did not fall within the meaning of "shop assistants" and that regulation 3(i)(c) of the Wages Regulations (Shop Assistants) Order 1970 did not apply to him. Accordingly, the learned magistrate acquitted and discharged the respondent without calling for its defence.

The Public Prosecutor appealed.

The main ground of appeal was that the learned magistrate had misdirected himself in law in regard to the interpretation of the provisions of regulation 3(i)(c) of the said Order of 1970.

Held, dismissing the appeal: although regulation 3(i)(c) did apply to the employee, Kamaruddin, he came within the ambit of the provision as a "worker" and not as a "shop assistant". Unless he was a shop assistant, the provision of the Schedule to the Wages Regulations (Shop Assistants) Order had no effect on him on March 1, 1970. As a "worker", they were applicable to him only with effect from March 19, 1970 the date on which the subsidiary legislation was published in the *Gazette*. Under the circumstances, the prosecution had failed to establish a *prima facie* case that for the month of March 1970, Kamaruddin was being paid less than the statutory minimum of $100 per month by the respondent, as laid down in regulation 4(i).

Per Mohamed Azmi J.: "... the duty of the learned magistrate was to interpret the provision of regulation 3(i)(c) of the Wages Regulations (Shop Assistants) Order, 1970, and as the wordings of the said provision are clear, they should be given their natural meaning without resorting to English

statutes unless the provisions of the relevant English law are in *pari materia* with the law under consideration." (*Post* p. 211 A *l*).

Cases referred to:-

(1) *Melluish* v. *London County Council* [1914] 3 K.B. 325 at p. 327.

(2) *Prance* v. *London County Council* [1915] 1 K.B. 688 at p. 695.

MAGISTRATE'S CRIMINAL APPEAL.

Ahmad Fairuz bin Dato' Sheikh Abdul Halim (Deputy Public Prosecutor) for the appellant

A. K. Lee for the respondent.

Cur. Adv. Vult.

Mohamed Azmi J.: The respondent in this case was summoned before the magistrate at Kuala Lumpur on the following charge: —

"That you, Economy Printers Sdn. Bhd., 12, Jalan Mountbatten, Kuala Lumpur, being the employer of Kamaruddin bin Mong, aged 25 years, a full time worker to whom The Wages Regulation (Shop Assistants) Order, 1970 made under section 12(3) of the Wages Councils Ordinance, 1947 applies, did fail to pay to the said worker for the month of March, 1970 remuneration not less than the Statutory Minimum Remuneration as laid down for workers employed in Area A of paragraph 4(i) of the said Order and thereby committed an offence under section 13(2) of the said Ordinance punishable under the same section thereof."

At the close of the case for the prosecution, the learned magistrate found that no case had been made out which, if unrebutted, would warrant a conviction. He accordingly acquitted and discharged the respondent without calling for its defence. The Public Prosecutor now appeals against the order of acquittal and discharge.

The facts of this case as found by the learned magistrate were as follows. One Kamaruddin (PW3), who was the subject of the charge, had been working as a full-time machine operator in the employment of the respondent company since 1966. The printing business of the respondent company was situated at No. 12, Jalan Mountbatten, Kuala Lumpur, which occupied all three floors of the building. The front portion of the ground floor was occupied by the retail trade of the company whilst the rear half together with the remaining two floors comprised the printing section. The retail trade and the printing sections at the ground floor were separated by a wall through which a door was provided for access between the two sections of the company's business. In March 1970 Kamaruddin, who according to the evidence was over twenty one years of age, was paid a monthly salary of $96; and by virtue of the provisions in the Wages Regulations (Shop Assistants) Order, 1970 *vide* P.U.(A)97 dated March 19, 1970, it was contended by the prosecution that he was being paid less than the statutory minimum of $100 per month as laid down in regulation 4(i) of the said Order.

The learned magistrate appeared to have dealt with the case on the basis of whether the employee Kamaruddin fell within the meaning of "shop assistants" under the Wages Regulations (Shop Assistants) Order, 1970. Regulation 1(2) of the said Order provided that: "These provisions of the Schedule hereto shall as from 1st March, 1970, have effect to shop assistants in that Schedule defined". As the definition of "shop assistants" was not to be found either in the Wages Regulations (Shop Assistants) Order, 1970 nor in the Wages Councils Ordinance No. 41 of 1947, under which Ordinance the said Order was made, the learned magistrate applied the meaning of "shop assistant" as defined by section 74 of the English Shops Act 1950. This section in effect re-enacts the definition of "shop assistant" under section 19 of the repealed Shops Act 1912 which defined the term as "any person wholly or mainly employed in a shop in connection with the serving of customers or the receipt of orders or the despatch of goods". As to the meaning of the expression "in connection with the serving of customers" in the said section, he cited *Melluish* v. *London County Council*(1) and *Prance* v. *London County Council*.(2) The learned magistrate accordingly held not only that the business connection had to be direct but also it had to do with the serving of customers. In the result, the learned magistrate found Kamaruddin did not fall within the meaning of "shop assistants" and came to the conclusion that regulation 3(i)(c) of the Wages Regulations (Shop Assistants) Order, 1970 did not apply to him.

The main ground of appeal is that the learned magistrate has misdirected himself in law in regard to the interpretation of the provisions of regulation 3(i)(c) of the Wages Regulations (Shop Assistants) Order, 1970.

In my view, both the authorities cited by the learned magistrate do not establish the proposition that the business connection should be a direct one. The observation of Avory J. in *Melluish* v. *London County Council, supra,* that there must be a direct connection and not a remote and indirect connection — which was relied upon by the learned magistrate — was not the view of all the members of the court in that case. In fact in the subsequent case of *Prance* v. *London County Council,* Lush J. expressed some doubt as to the accuracy of the observation when he said at page 694:

"... but in my judgment a narrow interpretation ought not to be placed upon the words in section 19, nor ought the scope of the benefit which section 1 was intended to confer upon persons employed in shops to be cut down. I am not sure that I quite understand the meaning of the words used by my brother Avory in *Melluish* v. *London County Council* when he said 'I think there must be a direct connection with the serving of customers and not a remote and indirect connection'."

It should be noted that in *Melluish* v. *London County Council* it was held that a kitchenmaid employed in the kitchen of a restaurant, whose duties do not take her into the room where the customers are served, is nevertheless a person "employed in a shop in connection with the serving of customers". Shearman J. at page 329 said that the magistrate was right in putting a wide and comprehensive meaning on the words "in connection with". Under the circumstances, I find the learned magistrate has misdirected himself by requiring the prosecution to prove direct connection between the work done by Kamaruddin and the retail trade section. Similarly, by adopting the definition of "shop assistant" as defined in the Shops Act in England, the learned magistrate has also misdirected

himself by requiring the prosecution to prove that the business connection must have something to do with the serving of customers. The duty of the learned magistrate was to interpret the provision of regulation 3(i)(c) of the Wages Regulations (Shop Assistants) Order, 1970, and as the wordings of the said provision are clear they should be given their natural meaning without resorting to English statutes unless the provisions of the relevant English law are in *pari materia* with the law under consideration.

Regulation 3(i) provides as follows:

"Subject as hereinafter provided, the provisions of this Schedule apply in areas A, B and C to workers who are employed in —

(a) any business in which the retail sale of any commodity, including retail sale by auction is carried on;

(b) the business of a pawn-broker, barber, hairdresser, launderer, dry-cleaner and dyer;

(c) any business carried on in connection with and on premises which are contiguous with any premises where retail sale is carried on."

(The underlinings are mine).

Giving regulation 3(i)(c) its natural interpretation, in my view, subject to the provision of regulation 3(ii), a person would come within its ambit if —

(i) he is a worker employed in any business;

(ii) such business is carried on in connection with any premises where retail sale is carried on; and

(iii) such business is carried on, on premises which are contiguous with any premises where retail sale is carried on.

On the first prerequisite, the term "worker" is defined by section 2(1) of the Wages Councils Ordinance, 1947 to mean:

"any person who has entered into or works under a contract with an employer, whether the contract be for manual labour, clerical work or otherwise, be expressed or implied, oral or in writing and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour, except that 'worker' does not include any person who is employed casually and otherwise than for the purposes of the employer's business".

In the instant case, there could be no doubt that Kamaruddin was a worker employed in a business within the meaning of regulation 3(i)(c). As regards requirement (ii), whether the business in which a worker is employed is carried on "in connection with any premises where retail sale is carried on" must necessarily depend on the facts of each case, and the words "in connection with" should not be given a narrow interpretation. In this case, there was sufficient evidence before the learned magistrate to show that the printing business, in which Kamaruddin was employed as a full-time machine operator, was carried on in connection with the retail sale section of the premises. Kamaruddin had testified that he printed books for customers. It is also not in dispute that both the printing section and the retail sale section belonged to the respondent, and the 'connection' element was further shown by the fact that both sections were administered as one unit whereby the wages register, E.P.F. and other registers in connection with the respondent's business were all kept in the same office. Indeed, without the printing section, it is difficult to see how the retail section could carry on in the context of the respondent's business. With regard to requirement (iii), it is not in dispute the printing section in which Kamaruddin was working was contiguous with the premises where the retail sale was carried on. Under normal circumstances, as all the three prerequisites had been complied with, the prosecution would have established a *prima facie* case that Kamaruddin was an employee of the respondent to whom the Wages Regulations (Shop Assistants) Order, 1970 applied.

However, in this appeal, the fact that the prosecution has satisfied all the three ingredients under regulation 3(i)(c) does not dispose of the whole matter. It is necessary to observe that the respondent was alleged to have committed an offence under the said regulation in respect of Kamaruddin's pay for the month of March 1970 when he was paid only $96, that is to say $4 short of the minimum remuneration required by law. Except for shop assistants, it would appear that the provisions of the Wages Regulations (Shop Assistants) Order, 1970 came into effect on March 19, 1970, being the date on which the subsidiary legislation was published in the *Gazette*, but as far as shop assistants are concerned it is specifically provided by regulation 1(2) that the date of commencement of the Order was March 1, 1970. I am, therefore, of the opinion that as far as the date of coming into force of the subsidiary legislation, the Order does make a distinction between "shop assistants" and "workers" in general. The learned deputy public prosecutor, whilst conceding that the term "shop assistants" had not been defined anywhere, contended that regulation 3 had indirectly defined a class of shop assistants. I cannot agree with this contention. Regulation 3 specifically refers to "workers", and by virtue of section 20 of the Interpretation and General Clauses Ordinance, 1948, the definition of "workers" in section 2 of the Wages Councils Ordinance, 1947 under which the subsidiary legislation was made should be applied.

Thus, although regulation 3(i)(c) did apply to Kamaruddin in this case, he came within the ambit of the provision as a "worker" and not as a "shop assistant". Unless he was a shop assistant — a term which the Order has apparently omitted to define — the provisions of the Schedule to the Wages Regulations (Shop Assistants) Order had no effect on him on March 1, 1970. As a "worker", they were applicable to him only with effect from March 19, 1970. Under the circumstances, the prosecution had failed to establish a *prima facie* case that for the month of March 1970 Kamaruddin was being paid by the respondent less than the statutory minimum of $100 per month as laid down in regulation 4(i).

The appeal is, therefore, dismissed. The order of acquittal and discharge must stand.

Appeal dismissed.

Solicitors: *A. K. Lee & Co.*